

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RYAN KERWIN

: CASE NO. 05-93 ERIE

'06 DEC 18 P1:51

:

VS.

: MAGISTRATE JUDGE SUSAN BAXTER

CLERK
U.S. DISTRICT COURT

:

LT. WILLIAM MCCONNELL

: DISTRICT JUDGE SEAN MCLAUGHLIN

MOTION FOR SPEEDY DISPOSITION OF PLAINTIFF'S MOTION FOR
PRODUCTION OF TRANSCRIPTS (DOC. #66), PLAINTIFF'S OBJECTIONS TO
JUDGE BAXTER'S NOVEMBER 29, 2006 ORDER (DOC. #65) AND THE
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DOC. #52).

1. On November 29, 2006 this court issued an order (Doc. #64) dismissing the Defendant's Motion for Summary Judgment without prejudice and instructing the defendant, sua sponte, to refile the motion raising a failure to exhaust administrative remedies defense within 30 days of that order. (December 29, 2006)
2. On December 3, 2006 plaintiff filed objections to that order (Doc. #65) and made reference to testimony that was given at the March 3, 2006 sanctions hearing (Doc. #54) where the defendant's counsel verbally conceded that plaintiff properly exhausted his administrative remedies and expressed their intent to waive that defense.
3. However, plaintiff is not currently in possession of the transcripts in question which he needs to properly support his objections and/or respond to the Defendant's Motion for Summary Judgment due on December 29, 2006.
4. Immediate resolution of plaintiff's Motion for Production of Transcripts will allow him to properly support his objections

before December 29, 2006.

5. Immediate resolution of plaintiff's objections will obviate the need for the defendant to file a renewed motion for summary judgment on December 29, 2006.
6. Obviating the need for the defendant to file a renewed motion for summary judgment will obviate the need for plaintiff to waste both time and expense filing an unnecessary response in relation thereto.
7. In the event plaintiff's objections are not resolved by December 29, 2006 plaintiff will still need the transcripts in question on or before that date so that he can respond to the defendant's renewed motion for summary judgment.
8. Furthermore, plaintiff requires the court to resolve the Defendant's Motion for Summary Judgment before January 7, 2006.
9. January 7, 2006 is the date dispositive motions are due on case #1:CV-03-2253 (Kerwin vs. Varner, Middle District) and plaintiff intends to use the retaliation evidence and court findings in this case to support his motion for summary judgment and/or response to the defendant's motion for summary judgment in the other case.
10. This is due to the fact that the retaliation plaintiff suffered in the instant case was a direct result of having filed the lawsuit in the other case and such evidence is admissible in the other case under Federal Rule Evidence 404(b) to show consciousness of guilt.
11. It has already been 9 months since the last summary judgment brief was filed in this case and that was more than enough time for the court to issue a mere report and recommendation

on such a simple issue. (1 cause of action, 1 defendant, and defenses of failure to state a claim and qualified immunity.)

WHEREFORE, plaintiff respectfully requests that this honorable court resolve Plaintiff's Motion for Production of Transcripts (**Doc. #66**) and Objections to Judge Baxter's November 29, 2006 Order (**Doc. #64**) before December 29, 2006 and resolve the Defendant's Motion for Summary Judgment (**Doc. #52**) before January 7, 2006.

Respectfully submitted,

12/14/06

Date

Ryan Kerwin

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CERTIFICATE OF SERVICE

I hereby declare that I mailed a true and correct copy of the attached Motion for Production of Transcripts and Motion for Speedy Disposition to the defendant's counsel at the following address:

Mariah Passarelli
Office of Attorney General
Manor Complex
564 Forbes Ave.
Pittsburgh, PA. 15219

12/14/06

Date

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